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# Written statement* submitted by the World Organisation Against Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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# End impunity for police torture in Pakistan system of forced arbitrary detention and forced disappearance fosters torture and impunity*

1. Police brutality and torture are endemic in Pakistan. Police relies upon confessions obtained through torture as the primary form of evidence and therefore, routinely abuses, arbitrarily detains and forcibly disappears civilians. Through its research and by representing torture victims, the World Organization against Torture **(OMCT)** and the Justice Project Pakistan **(JPP)** have observed that laws and police practice foster arbitrary detention and forced disappearance thereby facilitating systematic torture and impunity for such acts. As a result, (i) torture is accepted as an inevitable part of policing in Pakistan, and; (ii) perpetrators of torture are granted impunity through a combination of socio-cultural acceptance, lack of independent oversight, widespread powers of arrest and detention, procedural loopholes and ineffective safeguards, including Pakistan's failure to criminalize torture.

## A. WIDESPREAD POLICE TORTURE AND ILL-TREATMENT

2. In a study conducted by the JPP and Allan K. Lowenstein International Human Rights Clinic at Yale Law School on a sample of 1867 Medico-Legal Certificates from the District of Faisalabad from 2006-2012, independent medical practitioners confirmed allegations of torture in 1424 cases.[1] In 96 additional cases physicians found signs amounting to injury which needed further testing to confirm the torture. 134 of the confirmed allegations of torture pertained to women and 58 involved children.[2] It was discovered that the police often arrested victims for no cause and arbitrarily detained them for prolonged periods whilst subjected them to multiple forms of abuse including severe beating, suspension in painful ways, stretching and prolonged solitary confinement.[3] Sexual assault and cultural humiliation (such as parading victims naked) were also common methods of intimidation, especially against women and children.[4]

3. Despite ratifying the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR) on 23 June 2010, the Government of Pakistan has not taken any effective measures to prevent, prohibit and redress torture and ill treatment by the police. Pakistan has still failed to submit the initial reports that became due in 2011 and any supplementary periodic reports thereafter. Additionally, no domestic legislation giving effect to the provisions contained in the UNCAT has been enacted even five years after ratification. A draft of the Anti-Torture Bill has been pending in the National Assembly for over a year, but there has been no demonstrated political will in enacting it.

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[1] Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School. 'Policing as Torture: A Report on Systematic Brutality and Torture By the Police in Faisalabad, Pakistan' March 2014. Available at < http://jpp.org.pk/torture/wp-content/uploads/2014/07/JPP-Launch-Report_052314.pdf>

[2] Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School. 'Abuse of Women by Faisalabad Police'. June 2014.Availible at < http://jpp.org.pk/torture/wp-content/uploads/2014/08/JPP-Abuse-of-Women-Follow-Up-Report-0530141.pdf>.

Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School. ' Abuse of Juveniles by the Faisalabad Police' June 2014. <http://www.law.yale.edu/JPP_Abuse_of_Juveniles_Follow_Up_Report_053014.pdf>

[3] Ibid at note 2.

[4] Ibid.

## B. THE LACK OF DEFINITION AND CRIMINALISATION OF TORTURE

4. There is currently no definition of torture under Pakistan's domestic legal framework within the meaning provided under Article 1 of the UNCAT. Article 14 (2) of the Constitution of the Islamic Republic of Pakistan, 1973, the sole legal provision defining torture, only prohibits acts of torture committed by public officials for the purpose of extracting evidence. Pakistan has additionally failed to fulfill its obligations under Article 4 of the UNCAT to enact legislation criminalizing and punishing torture, as defined under Article 1 of the UNCAT. There is no mention of torture under Pakistan's two primary criminal codes: The Pakistan Penal Code (Act XLV of 1860) **(Penal Code)** and The Code of Criminal Procedure (Act V of 1898) **(CPC).** Article 156(d) of the Police Order, 2002 stipulates a minor penalty of imprisonment of a maximum period of five years on police officers for offences including "torture or violence" on any person in custody. Such provision clearly fails to distinguish torture from common assault and to impose a punishment proportional to the gravity and severity of the offence as required by the UNCAT.

## PAKISTAN HAS FAILED TO TAKE MEASURES TO PREVENT AND INVESTIGATE ARBITRARY DETENTION AND ENFORCED DISAPPEARANCES BY THE POLICE

5. The JPP and the OMCT have observed that it is an unfortunate reality that police torture in Pakistan is facilitated by provisions under Pakistan's legal framework that provides vast powers of arrest and detention to police and provides effective impunity to the perpetrators of torture. Under the CPC any person under arrest is to be presented before a Magistrate in 24 hours who may thereafter remand him to police custody for a period of 15 days to facilitate any ongoing investigation.[5] Based on the JPP's experience, the grant of such remand is fairly mechanical with the Magistrate inevitably acquiescing to the wishes of the police without regard to the security of the detained. In the absence of any independent mechanism monitoring police custody, police arbitrarily detain suspects for prolonged periods of time without access to family and legal counsel thereby making them vulnerable to torture and ill-treatment. Suspects are often transferred to private torture cells located off station premises where they are tortured by police with impunity from superiors or media. Civil Society reports that there are 1300 private torture cells operating all over the country- one for each police station.

6. Pakistan's Anti-terrorism laws allow police to arbitrarily detain suspects for a period of up to three months without charge or access to any independent review. The newly enacted Protection of Pakistan Act 2014 **(PPA)** allows the state to detain suspects at undisclosed locations without any grounds and access to family and legal representation thereby putting them at risk for torture. Similarly, under section 11E of the Anti-Terrorism Act, 1997 **(ATA)** security agencies and civil armed forces can detain any person suspected of committing an offence under the Act for a period of up to 3 months without review or the possibility of a habeas petition. During this time investigation is meant to be completed by a joint investigative team. However, the clause under Section 21E of the ATA allows the remand period to be extended a further 90 days on application to the courts if "further evidence may be available". Additionally under section 11E of the ATA any person suspected of being involved in the activities of a proscribed organization can be detained for a period of up to a year.

7. In addition to preventive detention, police in collaboration with security agencies also routinely hold suspected terrorists, domestic political opponents, particularly Sindhi and Baloch nationalists, and journalists under enforced disappearance. Civilians are abducted by agents from their homes or public places and held in

unacknowledged detention at secret centers for over decades, where they are denied all access to their families and legal help. Some are victims of extra-judicial killings and buried without any public knowledge. In 2010, the Ministry Interior admitted that there are records of 965 unresolved cases of disappearances, whilst human rights organizations and families estimate the figures at 7000.[6] To date no member of law enforcement has been prosecuted in a case of enforced disappearance.

8. Law enforcement officials in Pakistan operate with little or no independent oversight that fosters a culture of impunity for the infliction of torture and other abuse of power. The Police Order, 2002 was enacted to introduce a system of independent monitoring on the operation of the police force. The Order provided for the institution of accountability mechanisms for reporting police abuse. At the district level, it established District Public Safety and Police Complaints Commissions (DPSPCC) and the Provincial Public Safety and Police Complaints Commission (PPSCPCC) at the Provincial level. However, only a few of the commissions have been established and those that were have done little more than hold a few meetings. The PPSPCC in Punjab – Pakistan's largest province- has not met for the past five years.[7]

## C. PAKISTANI LAW DOES NOT ADEQUATELY EXCLUDE STATEMENTS PROCURED THROUGH TORTURE

9. Police torture and arbitrary detention are effectively deemed acceptable methods of criminal investigation, largely due to a lack of resources and training, as well as a pervasive institutional culture that disregards human dignity. Confessions and testimonials obtained under torture are used as the primary form of evidence in order to "resolve" cases expeditiously. Article 14(2) of the Constitution explicitly prohibits the "use of torture for the purposes of extracting evidence". The Qanun-e-Shahadat Order, 1984 (Law of Evidence) renders any confession or other statement made under police custody inadmissible as proof unless made in the presence of a Magistrate. However, JPP has observed that police get around the law by threatening the life of the prisoner and/or his or her family if he or she does not repeat the confession in front of the Magistrate. Additionally, police also torture the prisoner into making false statements about *physical evidence,* which then confected by the police becomes admissible at trial. Meanwhile, recent anti-terrorism legislation has broadened the scope of admissible evidence obtained through torture. Under Section 21-H of the ATA confessions made under the custody of police and/or security forces in terrorism cases are now admissible in evidence.

**Case study: Shafqat Hussain**

10. Shafqat Hussain was sentenced to death under the ATA at the age of 14 for alleged kidnapping and murder. He was convicted on the basis of a solitary piece of evidence - a confession that had been procured over 9 days of savage torture under arbitrary detention. Shafqat was blindfolded, kept in solitary confinement, beaten, electrocuted and burned with cigarette butts until he gave a false confession of guilt. Shafqat was then subjected to seven execution dates in the first seven months of 2015 – torture enough in of itself – before he was executed on 4th August 2015.

11. Pakistan has also failed to provide prompt and impartial investigation for allegations of torture as required under Article 13 of the UNCAT. There is a prevailing culture of apathy towards grievances of torture victims. In the absence of functioning monitoring bodies for complaints of torture, victims have to approach police for registration of an FIR (First Information Report). This obviously creates a ludicrous situation where victims must register an FIR with the people who committed the torture. People who have approached police with

[6] Amnesty international. ' The Bitterest of Agonies: End Enforced Disappearances in Pakistan' . September 2011.
[7] Ibid at note 1, at pg 26.

complaints mistreatment have often been jeered at and turned away. Police often refuse to file complaints against their colleagues and threaten victims and their families to withdraw their complaints. Even if an FIR is registered against a police officer, the court will inevitably rely upon the police to investigate itself. In most cases, the accused officers are appointed to undertake the investigation. In order to avoid culpability and reduce the credibility of the victims, the police often then file false charges in retaliation.

## D. PAKISTAN HAS FAILED TO FULFIL ITS LEGAL OBLIGATION TO PROVIDE REPARATION FOR ACTS OF TORTURE

12. In the absence of any legislation criminalizing torture and arbitrary detention, there is no specific right to seek reparation available to victims. In theory, victims can seek compensation through a petition alleging violation of fundamental rights to either the High Court or to the Supreme Court. This is an essentially impossible burden, since a victim must pay lawyers and legal fees even to contemplate such a course. Additionally, under the PPC, those who cause hurt to extort a confession might be imprisoned. However, these provisions only impose liability on individuals and do not hold the authorities accountable to provide reparation for the violations committed by its agents.

13. Thus, the stark reality of "reparation" for victims in Pakistan is that it just does not happen. The victim is far more likely to receive additional threats and abuse for bringing torture to the attention of the authorities, than to receive any form of reparation. Fear of retaliation and the weakness of any meaningful judicial respect (particularly the delay involved in the resolution of a case), discourages most victims from seeking reparation through the court system. Of the 1,867 people who reported being tortured in Faisalabad there is no evidence that any of these people received reparations.[8]

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*Justice Project Pakistan, NGO without consultative status, also shares the views expressed in this statement.

[8] Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School. 'Policing as Torture: A Report on Systematic Brutality and Torture By the Police in Faisalabad, Pakistan' March 2014. Available at < http://jpp.org.pk/torture/wp-content/uploads/2014/07/JPP-Launch-Report_052314.pdf.